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Forty-third session

Summary record of the 924th meeting*

Held at Headquarters, New York, on Friday, 2 July 2010, at 10 a.m.

Chairperson: Mr. Sandoval ..... (Chile)

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* No summary records were prepared for the 922nd and 923rd meetings.

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The meeting was called to order at 10.30 a.m.

Adoption of the report of the Commission

1. **The Chairperson** invited the Rapporteur, Mr. Mekjian (Armenia), to introduce the draft report of the Commission on the work of its forty-third session.

2. **Mr. Mekjian** (Armenia), Rapporteur, said that documents A/CN.9/XLIII/CRP.1 and addenda, including addenda 1 to 4 and 6 to 8, already adopted at earlier meetings, would together form the report of the Commission.

A/CN.9/XLIII/CRP.1

3. **Ms. Musayeva** (International Trade Law Division) said that, in paragraph 5, "Colombia" should be deleted and, in paragraph 6, "Slovenia" should be added.

4. *Document A/CN.9/XLIII/CRP.1, as orally revised, was adopted.*

A/CN.9/XLIII/CRP.1/Add.5

5. **Mr. Sorieul** (Secretary of the Commission) recalled that, at its 916th meeting, the Commission had considered adding to the draft decision reproduced in paragraph 1 a fourth preambular paragraph that would draw attention to the contribution of the UNCITRAL Arbitration Rules to the promotion of the rule of law. As, however, that was a substantive matter which had not been discussed in the Working Group, it would be more appropriate to include words to that effect in the general resolution on the Commission's work to be submitted to the General Assembly. He therefore proposed withdrawing the proposed text. It had also been suggested at the earlier meeting that, in the first and second lines of paragraph 5, the words "should also undertake" should be amended to read: "could also consider undertaking".

6. **The Chairperson** took it that there was no objection to those proposals.

7. **Ms. Smyth** (Australia), supported by **Mr. Chan** Wah-Teck (Singapore), suggested that, in paragraph 5, fourth line from the bottom, the words "should seek to identify" should be replaced by "may identify".

8. **Mr. Loken** (United States of America) suggested that, in the sixth and seventh lines of paragraph 3, the words "if they would benefit from" should be amended to read: "if they had the benefit of".

9. *It was so decided.*

10. *Document A/CN.9/XLIII/CRP.1/Add.5, as orally amended, was adopted.*

A/CN.9/XLIII/CRP.1/Add.9

11. **Mr. Loken** (United States of America) suggested amendments to paragraph 4, to bring it into line with document A/CN.9/690. The second and third sentences should be amended to read: "It noted that the Working Group, at those sessions, completed a second reading of all chapters of the draft revised model law and began its third reading of the text. The Working Group settled many of the substantive issues [remainder of sentence unchanged]". Before the last sentence of the paragraph, the following new sentence should be inserted: "The Commission noted that the Working Group also agreed to undertake work on a draft revised Guide to Enactment."

12. *It was so decided.*

13. **Mr. Chan** Wah-Teck (Singapore) said that the final sentence of paragraph 6 should be amended to read: "The Commission instructed the Working Group to exercise restraint in revisiting issues on which decisions had already been taken."

14. *It was so decided.*

15. *Document A/CN.9/XLIII/CRP.1/Add.9, as orally amended, was adopted.*

A/CN.9/XLIII/CRP.1/Add.10

16. **Mr. Loken** (United States of America) suggested adding a sentence at the end of paragraph 7, which would read: "Another view was that there was not necessarily such a conflict." At the end of paragraph 11, he suggested the replacement of the word "necessary" by "appropriate".

17. **Mr. Bellenger** (France) said that, likewise in the final sentence of paragraph 11, it should be specified that the mandate to be given to the Working Group should be not only clear but also circumscribed.

18. **Ms. Sabo** (Canada) suggested that the Working Group should be given a "clearly-defined mandate".

19. **The Chairperson** took it that there were no objections to the suggested changes.

20. *Document A/CN.9/XLIII/CRP.1/Add.10, as orally amended, was adopted.*

A/CN.9/XLIII/CRP.1/Add.11

21. **Ms. Sabo** (Canada) asked whether the square brackets around the word "Unamended" in paragraph 1, subparagraph (a), had any particular significance.

22. **Mr. Sorieul** (Secretary of the Commission) said that the title of the Convention listed in that subparagraph had been reproduced from the report of the previous year and that the square brackets must be maintained.

23. **Mr. Chan** Wah-Teck (Singapore) suggested the replacement, at the beginning of paragraph 3, of the words "Singapore also deposited" by "Following this, Singapore deposited". At the end of the third sentence of that paragraph, after the words "information and communication technology", he suggested adding "and that Singapore had enacted legislation to give effect to the Convention in its domestic laws." He also suggested that the beginning of the following sentence should be amended to read: "It noted that wider adoption [remainder unchanged]".

24. **Mr. Maradiaga** (Honduras) suggested the addition, at the end of paragraph 3, of words to the effect that Honduras encouraged the representatives of other States members of the Commission to promote the adoption of the United Nations Convention on the Use of Electronic Communications in International Contracts in their respective countries.

25. **Ms. Smyth** (Australia) suggested the insertion of a new first sentence in paragraph 4, which would read: "The Commission was informed that Australia had enacted legislation based on the UNCITRAL Model Law on International Commercial Arbitration, as amended in 2006." The word "also" would then need to be inserted between "was" and "informed" in what would then become the second sentence.

26. **Ms. Millicay** (Argentina) said that it would be more appropriate for the new sentence suggested by the delegation of Australia to be added at the end of paragraph 4.

27. **Ms. Sabo** (Canada) suggested that the new sentence could be added, rather, at the end of paragraph 3.

28. **Ms. Smyth** (Australia) said that the new sentence could become a new paragraph 4 and that the current paragraph 4 could become paragraph 5.

29. **Mr. Sorieul** (Secretary of the Commission) said that, for the sake of consistency, the new sentence suggested by the delegation of Australia might be inserted in paragraph 1, subparagraph (l), thereby enabling paragraph 4 to retain its general character.

30. **Ms. Smyth** (Australia) said that the information contained in paragraph 1, subparagraph (l), was described as having been received before the beginning of the current session, at which time Australia had not yet enacted the legislation in question.

31. **The Chairperson** took it that the Commission agreed to the insertion in paragraph 4 of the new sentence suggested by the delegation of Australia.

32. *Document A/CN.9/XLIII/CRP.1/Add.11, as orally amended, was adopted.*

A/CN.9/XLIII/CRP.1/Add.12

33. *Document A/CN.9/XLIII/CRP.1/Add.12 was adopted.*

A/CN.9/XLIII/CRP.1/Add.13

34. **Mr. Chan** Wah-Teck (Singapore) said that paragraph 7 did not adequately capture the Commission's extensive discussion or consensus on the issue. He therefore proposed that the first sentence should be amended to read: "After discussion delegates agreed that the secretariat should convene a colloquium to explore the legal and regulatory issues surrounding microfinance which fell within the mandate of UNCITRAL." The second sentence should be amended to read "This colloquium may include experts working from other organizations actively working on the issue."

35. **Ms. Sabo** (Canada), supported by **Ms. Umoren** (Nigeria), said that the report should make it clear that experts should be invited to participate in the colloquium.

36. **Mr. Chan** Wah-Teck (Singapore) said his delegation did not mean to suggest that experts should be excluded from participation in the colloquium, but it believed that the identification of participants should be left to the secretariat.

37. **Mr. Sorieul** (Secretary of the Commission) suggested that it could be left to the editorial services

to finalize the wording of paragraph 7 to make clear that the colloquium could benefit from the participation of relevant experts and that the issues to be studied should fall within the Commission's mandate, which was, after all, quite broad.

38. *Document A/CN.9/XLIII/CRP.1/Add.13, as orally amended, was adopted.*

A/CN.9/XLIII/CRP.1/Add.14 and Add.15

39. *Documents A/CN.9/XLIII/CRP.1/Add.14 and Add.15 were adopted.*

A/CN.9/XLIII/CRP.1/Add.16

40. **Ms. Sabo** (Canada), noting that the first sentence of paragraph 8 referred to the chairpersons of working groups, said that the statement applied also to the Commission itself. She therefore proposed the deletion of the words "of Working Groups".

41. **Mr. Chan** Wah-Teck (Singapore) proposed replacing the words "were expected to" by the word "can" in the last sentence of paragraph 8.

42. **Ms. Sabo** (Canada), supported by **Mr. Loken** (United States of America), said that the amendment proposed by the representative of Singapore might lead the Commission into consideration of the substantive issue involved. It was best to leave the text as it stood.

43. *Document A/CN.9/XLIII/CRP.1/Add.16, as orally amended by Canada, was adopted.*

A/CN.9/XLIII/CRP.1/Add.17

44. **Ms. Musayeva** (International Trade Law Division) said that paragraph 4 needed to be revised to reflect the statement that had been made in the Commission by the representative of the International Telecommunication Union (ITU). Accordingly, in the first sentence the words "a statement" should be replaced by "statements" and the words "and the International Telecommunication Union (ITU)" should be added at the end of the sentence. The rest of the paragraph should become a separate paragraph — new paragraph 5 — and a new paragraph 6 should be added, to read: "The Commission also heard a statement on behalf of ITU concerning its work on issues of cyber security, including identity management, data protection and security of electronic transactions. The Commission took note of the close cooperation between ITU and UNCITRAL in the formulation of legal standards relating to those issues and encouraged further cooperation in that direction."

45. *A/CN.9/XLIII/CRP.1/Add.17, as orally revised, was adopted.*

A/CN.9/XLIII/CRP.1/Add.18 to 21

46. *Documents A/CN.9/XLIII/CRP.1/Add.18 to 21 were adopted.*

A/CN.9/XLIII/CRP.1/Add.22

47. **Mr. Loken** (United States of America), referring to paragraph 3 (c), said that his delegation had been a strong proponent of work on online dispute resolution (ODR) and was pleased to see that it had already been assigned to a working group. The timing of the working group's session, however, might create a challenge for the preparation of relevant documents and attendance by members, since the session would take place fairly soon and a major international meeting on ODR was scheduled to take place in Vancouver at the beginning of November. It would be especially useful to have the results of the latter meeting in hand before the working group began its work on the topic.

48. **Mr. Sorieul** (Secretary of the Commission) said that the concerns expressed by the United States representative were legitimate, but there were constraints regarding availability of meeting rooms and interpretation services in Vienna. The secretariat would try to juggle with the dates made available to the Commission, taking fully into account the concerns and needs of all the working groups. Once the final dates of the working groups' sessions had been set, they would be posted on the UNCITRAL website and communicated to all concerned in a note verbale.

49. **Mr. Schoefisch** (Germany) said he hoped the dates for all the meetings could be settled as soon as possible.

50. **Ms. Sabo** (Canada) said that the Commission had already decided to leave it to the secretariat to determine the dates of the working groups' sessions. The dates given in the draft report were in any event provisional, subject to adjustment. No amendment was necessary.

51. **The Chairperson** said that the Commission had given the secretariat maximum discretion in dealing

with the calendar of meetings in the year before the next session.

52. *Document A/CN.9/XLIII/CRP.1/Add.22 was adopted.*

53. *The draft report as a whole, as amended and orally revised, was adopted.*

54. After the customary exchange of courtesies, **the Chairperson** declared the forty-third session closed.

The meeting rose at 12.15 p.m.